IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE NORPLANT CONTRACEPTIVE PRODUCTS LIABILITY LITIGATION	:	MDL DOCKET NO. 1038
BRANDI L. ALFORD, ET AL.	:	
V.	:	CASE NO.: 1:95CV5119
AMERICAN HOME PRODUCTS CORPORATION, ET AL.	:	

No. 4

MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE STATUTE OF LIMITATIONS

INTRODUCTION

Brandi Alford is one of the fifteen bellwether plaintiffs selected for the first three MDL trials, as contemplated by the Court's Order of October 28, 1996. *See Order Regarding Selection of Plaintiffs for Trial.* Alford had Norplant inserted in August 1992 and began to experience almost immediately the side effects about which she complains in the litigation. She also immediately attributed those side effects to Norplant. She did not file suit, however, for almost three years. The two-year Texas statute of limitations bars her claims *unless* the *American Pipe* doctrine applies to permit a pending class action complaint to toll the statute. Even then, the claims are barred *unless* a "piggybacking" rule applies to permit a succession of class action complaints to toll the statute repeatedly.

Wyeth contends that two Fifth Circuit decisions control – (1) that *Vaught v. Showa Denko K.K.*, 107 F.3d 1137 (5th Cir. 1997), held that Texas courts will not apply the *American Pipe* doctrine in personal injury cases, and (2) that *Salazar-Calderon v. Presidio*

Valley Farmers Ass'n, 765 F.2d 1334 (5th Cir. 1985), held that Texas courts will not apply a piggybacking rule. With regard to the first five bellwether plaintiffs, however, the Court held that the *Vaught* and *Salazar-Calderon* cases are distinguishable and not controlling in the Norplant litigation. *See Memorandum Opinion and Order Denying Defendants' Motion for Partial Summary Judgment on Limitations Grounds* (February 21, 1997); *Memorandum Opinion and Order Denying Defendants' Motion to Modify Judgment or, in the Alternative, to Withdraw the Ruling Denying Defendants' Motion for Partial Summary Judgment on Limitations Grounds* (May 1, 1997). On plaintiffs' appeal of the Court's order granting summary judgment against the first five bellwether plaintiffs, Wyeth invited the Court of Appeals to reach the statute of limitations issue *in dicta* and address the applicability of *Vaught* and *Salazar-Calderon,* but the Court declined to do so.

There are 1955 Texas plaintiffs in MDL-1038 who had Norplant inserted 30 months or more before filing suit and whose claims are almost certainly barred by the two-year statute of limitations ***if*** *Vaught* and *Salazar-Calderon* are controlling authority.[1] Review by the Fifth Circuit of this Court's determination that the two cases are not controlling could therefore advance resolution of a significant number of Texas cases, and possibly others.[2] Toward that

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[1] The claims of these 1955 plaintiffs would "almost certainly" be barred because the discovery taken from Norplant plaintiffs (whether in the MDL or state litigation) consistently shows that at least some number of the complained-about side effects manifested shortly after insertion and that plaintiffs attributed the side effects to Norplant.

[2] Other courts have rejected the argument that the *American Pipe* tolling doctrine applies to state law claims, or, more specifically, to personal injury claims. *Portwood v. Ford Motor Co.,* 701 N.E.2d 1102, 1104 (Ill. 1998) ("Although plaintiffs assert that the majority of courts which have considered this issue have chosen to adopt cross-jurisdictional tolling to preserve claims under state law, our research indicates precisely the opposite."), *cert. denied*, 199 S. Ct. 1046 (1999). *See also Jolly v. Eli Lilly & Co.*, 44 Cal.3d 1103, 1125 (1988) (adopting presumption that *American Pipe* tolling doctrine will not apply in personal injury, mass tort cases); *In re Agent Orange Product Liability*

end, Wyeth submits this motion as a vehicle for appellate review of this Court's previous determination that *Vaught* and *Salazar-Calderon* do not apply. The purpose of the motion is not to seek reconsideration of an issue to which the Court has devoted two opinions, but to expedite appellate consideration of the limitations issue via certification pursuant to 28 U.S.C. § 1292(b).[3]

STATEMENT OF UNDISPUTED FACTS

Brandi Alford

The testimony of plaintiff Brandi Alford establishes the fundamental, undisputed facts underlying this motion. Brandi Alford had Norplant inserted on August 7, 1992. Plaintiff Brandi L. Alford's Answers to Defendants' First Set of Interrogatories at 7, Tab 53. She claims that she began experiencing side effects that she attributed to Norplant immediately. Deposition of Brandi Alford at 206-07, Tab 92. Alford testified that within the first month after insertion, she was experiencing mood swings, depression, and abdominal cramps. *Id.* at 207 ("Q. What didn't you like about it during that first month? A. I had very – it gave – I had mood swings, I was depressed. When I did start my period with Norplant in that month, I cramped bad. I had abdominal cramping. It was severe. Very irritable. It was very unpleasant."). Alford contacted her doctor within four or five days after her insertion to ask about removal. *Id.* ("I contacted

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Litigation, 818 F.2d 210, 213 (2d Cir. 1987) (re Hawaii); *Barela v. Showa Denko K.K.*, No. CIV. 93-1469 LH/RLP, 1996 WL 316544, at *3-4 (D.N.M. Feb. 28, 1996) (re New Mexico). A decision by the Fifth Circuit that *Vaught* applies to the Texas Norplant plaintiffs would lend support to the conclusion that the *American Pipe* doctrine should not be applied, for example, to Illinois, California, New Mexico or Hawaii plaintiffs either – who collectively number almost 1890.

[3] Section 1292(b) provides that a district court may certify an order, not otherwise appealable, for review by the Court of Appeals, when the order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."

Dr. Hammil – it was approximately the 4th or 5th day after I had gotten Norplant – and told him that the way I was acting, I didn't like it and wanted to see about getting it out."). She testified that when she had her first period after Norplant insertion, during that first month, she experienced abdominal cramps, heavy bleeding, prolonged bleeding, depression and mood swings. *Id.* at 208. Alford called her doctor twice in the first month and complained about all of those side effects. *Id.* She testified that she "most definitely" believed at that time that all of those symptoms were related to Norplant, in part because she had been warned about them. *Id.* at 209-10. Alford also testified that she began to experience headaches within a few days of insertion, and claimed that she had dizziness, acne, breast tenderness, and arm pain all within the first month, and that at that time, she attributed all of those side effects to Norplant. *Id.* at 212-13.

Other than weight gain, which she claimed to first experience in the second month after insertion, *id.* at 213, Alford began to experience ***all*** of her claimed side effects within the first month and attributed them all, at that time, to Norplant. *Id.* at 216 ("Q. All of the side effects that you have described for us as the complaints you have about Norplant except the weight gain all occurred within that first month, correct? A. That's correct. What I remember, yes. Q. At that time in the first month, you thought they were all due to Norplant, correct? A. Yes."). Alford did not file a lawsuit, however, until August 30, 1995, approximately ***three years*** after the onset of her alleged side effects. *See* Complaint, Tab 55.

Class Action Complaints, Notice, and Reliance

The first nationwide Norplant class action that encompassed Brandi Alford was filed on November 8, 1993, in California state court. *Williams v. Wyeth-Ayerst Laboratories,*

Inc., No. 95-6198 (Cal. Super. Ct. San Francisco County), Tab 46.[4] The putative class in that case comprised "all those persons legally damaged by Defendant's design, manufacture, marketing, and sale of the Norplant System." *Id.* ¶ 13. On February 7, 1994 (91 days later), the Superior Court sustained Wyeth's demurrer and dismissed the class action allegations without leave to amend. Tab 47. On February 23, 1994, the same plaintiff then filed a ***second*** class action employing the same class definition – but this time in federal court. *Williams v. Wyeth-Ayerst Laboratories Co.*, No. 94-0625 (N.D. Cal.), Tab 48. On June 17, 1994 (124 days later), the federal court dismissed the class action allegations, ruling that the state court's sustaining of Wyeth's demurrer was a "final and appealable judgment . . . on the merits of the class certification issue." Tab 49.

Between the date of that ruling and December 6, 1994, when the Judicial Panel on Multidistrict Litigation transferred all pending Norplant cases to this Court, 36 class action complaints were filed in (or removed to) federal courts around the country. Tab 51 (listing cases and date of filing). The allegations in the complaints, including the class definitions, were virtually identical. Indeed, 21 of the 36 class action complaints included the same typographical errors.

There are two important features about these class action complaints. First, none of the class action complaints filed after *Williams* gave Wyeth notice of the type and potential number of claims beyond that provided in the first *Williams* complaint. Second, such notice as

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[4] The very first class action complaint was filed in Illinois on September 13, 1993, but ***did not*** include plaintiff Brandi Alford. That class action was brought on behalf of "All women in the United States who have had the NORPLANT inserted in their bodies and who have sustained damages of less than $50,000." *Doe v. Wyeth-Ayerst Labs.*, Complaint ¶ 25, No 93L11096 (Ill. Cir. Ct. Cook County), Tab 50. Alford pleaded damages in excess of that amount. *See* Complaint ¶ 3, Tab 55.

the *Williams* complaint provided was inadequate to inform Wyeth as to the likely number of claimants. By 1994, the company knew the approximate number of women who had received Norplant (one million). But the class definition – not all women who had ***used*** the product, but rather "all those persons ***legally damaged*** by Defendants' design, manufacture, marketing and sale of the Norplant System" (emphasis added) – gave Wyeth no basis for assessing whether the putative class numbered in the hundreds or hundreds of thousands. *See* Complaint ¶ 13, Tab 46. After all, Wyeth did not design or manufacture Norplant. *See* Defendants' Answers to Plaintiffs' Second Set of Interrogatories, Nos. 6-7, Tab 52. Moreover, because the Learned Intermediary Doctrine applies to prescription drugs – and, thus, the threshold question is not whether Wyeth adequately warned the plaintiffs, but whether it adequately warned plaintiffs' prescribing physicians – the class definition and "marketing" allegations were particularly unhelpful, as they afforded no basis to estimate the number of physicians who allegedly were not adequately warned. And even had the class complaint given notice sufficient to permit an estimate of the number of unwarned physicians to be made, Wyeth had no means to extrapolate from that number the potential number of ***claimants***, for some doctors inserted Norplant in a handful of patients and others, in hundreds.

Brandi Alford did not rely on the filing of the *Williams* or any other class action complaint as tolling the statute of limitations. She filed her complaint on August 30, 1995, more than one month ***after*** the *Doe* complaint was filed in this Court.[5] She was not alone in ignoring *Doe*, for 661 cases involving 6001 plaintiffs were filed after *Doe* and before the August 6, 1996 order denying class certification. Indeed, members of the Plaintiffs' Steering Committee twice

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[5] *Doe v. Wyeth-Ayerst Laboratories*, C.A. No. 1:94CV442 (E.D. Tex.), Tab 54.

advised the Court that they did not rely on the *American Pipe* tolling rule in filing their cases. In April 1996, the Committee said:

> Texas just hasn't really nailed it down, so I didn't want to wait around forever with all my cases and find out later that, in fact, the statute wasn't tolled . . . and that I'd blown the statute for 900 people.

Transcript of 5/14/96 Hearing at 103, Tab 56.

In August 1996, the Committee acknowledged again that it was not relying on *American Pipe*:

> [B]ut there were Texas lawyers who filed all their cases, in an abundance of caution, because . . . there were cases, suggested that maybe *American Pipe* doesn't toll the statute in Texas, and since that hasn't been decided by the highest court, the lawyers, some of them, decided to file all of their cases.

Transcript of 8/9/96 Hearing at 4, Tab 57.

ARGUMENT

A. TEXAS LAW REQUIRED PLAINTIFF TO FILE HER TORT CLAIMS WITHIN TWO YEARS OF EXPERIENCING A LEGAL INJURY.

Under Texas law, "a person must bring suit for ... personal injury ... not later than two years after the day the cause of action accrues." Tex. Civ. Prac. & Rem. Code Ann. §16.003(a). *See, e.g., Schaefer v. Gulf Coast Regional Blood Center*, 10 F.3d 327, 331 (5th Cir. 1994) ("[I]n Texas, causes of action for personal injuries are governed by a two-year statute of limitations...."). "[C]laims which are not brought within a two-year period from the date the cause of action accrues are barred as a matter of law." *Id.*[6]

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[6] This two-year limitations period applies to personal injury claims based on theories of strict liability, negligence, or misrepresentation. *See, e.g., Bell v. Showa Denko K.K.*, 899 S.W.2d 749, 752-53 (Tex. App. – Amarillo 1995, writ denied). Deceptive Trade Practices Act claims are governed by a separate two-year statute of limitations, found

As the Texas Supreme Court has explained, "a cause of action accrues when a wrongful act causes some legal injury, even if the fact of injury is not discovered until later, and even if all resulting damages have not yet occurred." *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996). A cause of action accrues "when facts come into existence which give a claimant the right to seek remedy in the courts." *Seibert v. General Motors Corp.*, 853 S.W.2d 773, 776 (Tex. App. – Houston [14th Dist.] 1993, no writ). "In personal injury actions, it is when the wrongful act effects an injury, regardless of when the claimant learned of such injury." *Id.* (quoting *Robinson v. Weaver*, 550 S.W.2d 18, 19 (Tex. 1977)). When, as here, a plaintiff alleges multiple injuries resulting from a single wrongful act, her cause of action accrues when she experiences her first injury, even though other injuries have not yet occurred. *See, e.g., Pecorino v. Raymark Industries, Inc.*, 763 S.W.2d 561, 569-76 (Tex. App. – Beaumont 1988, writ denied); *Allgood v. R.J. Reynolds Tobacco Co.*, 80 F.3d 168, 170 (5th Cir. 1996).

The alleged "wrongful act" in the present case was Wyeth's failure to warn Brandi Alford's health care provider of the risks associated with Norplant. Wyeth's supposed failure to warn "effected an injury" when she began suffering adverse reactions to the contraceptive. Once these facts had "come into existence" and Alford possessed "the right to seek remedy in the courts," her causes of action accrued for limitations purposes. *Seibert*, 853 S.W.2d at 776. Alford's strict liability, negligence, misrepresentation, and DTPA causes of action all accrued when she first experienced an injury *i.e.*, when she first began to suffer the side effects from

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within the DTPA itself. Tex. Bus. & Com. Code § 17.565. Breach of warranty claims are considered contract claims, and are governed by a four-year statute of limitations. Tex. Bus. & Com. Code § 2.725.

Norplant about which she now complains.[7] It is undisputed that plaintiff brought suit more than two years after that date.

B. *AMERICAN PIPE* IS NOT TEXAS LAW, AND WOULD NOT SAVE PLAINTIFFS' CLAIMS EVEN IF IT WERE.

The United States Supreme Court in *American Pipe* and its progeny has held that the commencement of a class action lawsuit in federal court to adjudicate federal claims tolls the limitations period within which putative members must file individual actions, up until the court's denial of class certification. *See American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983). For two independent reasons, the *American Pipe* equitable tolling rule does not save plaintiff's tort claims. First, as recognized by a recent Fifth Circuit decision, *American Pipe* is not the law of Texas in cases involving personal injury claims. Second, even under this Court's prior analysis of why the *American Pipe* principle should apply, it is only the first-filed class action that could toll the statute of limitations, which in this case does not save plaintiff's claims.

1. *American Pipe* Is Not the Law of Texas in Cases Involving Personal Injury Claims.

The Fifth Circuit, in *Vaught v. Showa Denko K.K.*, 107 F.3d 1137 (5th Cir. 1997), held that under Texas law, the *American Pipe* tolling rule does not apply to mass personal injury

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7 The discovery rule, which defers accrual of a cause of action in those limited circumstances when "the nature of the injury incurred is inherently undiscoverable," does not apply. *S.V.*, 933 S.W.2d at 6. Plaintiff's injuries were both discoverable and discovered, as soon as they occurred. "The discovery rule speaks only of discovery of the injury. It does not operate to toll the running of the limitation period until such time as plaintiff discovers all of the elements of a cause of action." *Seibert*, 853 S.W.2d at 778 (quotation omitted); *see, e.g., Cody v. A.H. Robins Co.*, 696 S.W.2d 154, 156 (Tex. App. – San Antonio 1985, writ dism'd by agr.) ("[T]he limitation statutes are tolled only until discovery of the injury or until the time that reasonable diligence would have led to such discovery. We do not agree with plaintiff's contention that the limitation period began to run only . . . when she discovered that the IUD in question was a Dalkon Shield and that it was defectively designed.").

suits. The court recognized that the decision of the Texas Court of Appeals in *Bell v. Showa Denko K.K.*, 899 S.W.2d 749 (Tex. App. – Amarillo 1995, writ denied) controls this issue of state law. *Bell* made clear that personal injury claims predicated on Texas substantive law are ***not*** tolled by the filing of a mass tort class action:

> We do not agree that *American Pipe* operates to toll our state statute of limitations. That case involved an interpretation of Rule 23 of the Federal Rules of Civil Procedure and concerned the question of whether a federal statute of limitations was tolled for the purpose of filing a federal claim. Under the doctrine of the hoary case of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) and its progeny, where a claim is derived from state law, as is appellant's suit, state law governs the tolling of the statute of limitations.

Id. at 757.[8] The *Vaught* court wrote:

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[8] In reaching this conclusion, the Court of Appeals distinguished an earlier Texas appellate decision, *Grant v. Austin Bridge Construction Co.*, 725 S.W.2d 366 (Tex. App. – Houston [14th Dist.] 1987), which held that the filing of a class action on behalf of a "readily discernable group of people claiming injury to certain property rather than personal injury" served to toll the limitations period for members of that class:

> The basic premise of the *American Pipe* ruling is that a statute of limitations can be tolled while class allegations are pending, provided the defendant has notice of the type and potential number of the claims against it. In *Grant* [*v. Austin Bridge Construction*, 725 S.W.2d 366 (Tex. App. – Houston [14th Dist.] 1987, no writ], the suit involved was filed in a Texas state court by plaintiffs who were a readily discernible group of people claiming injury to certain property rather than personal injury. That distinction is important in determining whether the defendants have received fair notice of the existence of a claim by the filing of a class suit. For us to hold that the filing of a mass personal injury suit, in a federal court, in another state, with the variety of claims necessarily involved in such a case, entitled a plaintiff to a tolling of the limitations period such as in *American Pipe*, would be an extension not warranted by the *Grant* decision and we refuse to do so.

Bell, 899 S.W.2d at 758 (citation omitted).

> In the light of *Bell*, we understand Texas' tolling rule to operate as follows: A state (Texas) class action that raises property damage-type claims tolls a Texas statute of limitations pending a certification ruling, And, consistent with our understanding of this Texas tolling rule, it is unclear whether, under this rule, a *federal* class action filed in Texas or in any other State would ever toll a Texas statute of limitations, regardless of the type of claims raised.

107 F.3d at 1147 (emphasis in original).

Plaintiff Vaught, like plaintiff Alford, alleged personal injuries from the use of an FDA-approved product, but did not file her lawsuit within the requisite two year period. The Fifth Circuit rejected the argument that membership in a putative federal class action tolled the limitations period on *Vaught's* state law, personal injury claims until class certification was denied. This case is indistinguishable.

2. Even if *American Pipe* Applied, Plaintiff's Tort Claims Would Be Time-Barred.

In any event, plaintiff's tort claims would not be saved even were the *American Pipe* tolling rule applicable. First, Alford (like more than 6000 other MDL plaintiffs) did not rely on the rule by refraining from filing suit until this Court made a class certification ruling. *See Vaught*, 107 F.3d at 1143 n. 1. She filed her lawsuit on August 30, 1995, more than one month after the *Doe* class action complaint was filed in this Court, while that class action was still pending, and almost a year before class certification was denied. Indeed, counsel for Alford has acknowledged that, because neither the Texas Supreme Court nor the Texas Legislature had adopted *American Pipe* as Texas law, counsel did ***not*** rely on the filing of various class actions to toll the statute of limitations. *See* Transcript of 5/14/96 Hearing at 103, Tab 56; Transcript of 8/9/96 Hearing at 4, Tab 57. If plaintiff's reliance is the key, there is no basis to toll the statute of limitations.

Second, when it does apply, *American Pipe* tolls the limitations period during the pendency of only the ***first-filed*** class action. Once class certification in that initial case has been rejected, subsequently filed class actions do not toll the limitations period for putative class members. *Salazar-Calderon v. Presidio Valley Farmers Ass'n*, 765 F.2d 1334, 1351 (5th Cir. 1985). This rule prevents plaintiffs from "piggybacking" successive class actions onto one another, thereby tolling the limitations period indefinitely. The *Salazar-Calderon* case involved a series of actions brought by several hundred Mexican nationals against the Presidio Valley Farmers Association alleging, among other things, violations of the federal Farm Labor Contractor Registration Act. The first putative class action (the *Lara* suit) was filed in April 1979. The district court on March 30, 1981 denied class certification in *Lara*. Plaintiffs then filed two more class actions in a different court (the *Salazar* and *Primero* suits), whose putative members all were members of the earlier putative class. The district court denied certification of the *Salazar* and *Primero* classes on February 2, 1982. Shortly thereafter, 235 members of the *Salazar* and *Primero* putative classes filed individual actions (the *Zuniga* suit), realleging the same claims as had been brought in the earlier class action suits. The district court dismissed the *Zuniga* plaintiffs' claims as time-barred, reasoning that the filing of the *Salazar* and *Primero* class actions did not continue to toll the limitations period. The Fifth Circuit agreed:

> Plaintiffs argue on appeal that under *Crown* limitations tolled as well during the ten months when class certification in *Salazar/Primero* was pending, thus making the limitations period long enough to include all of the *Zuniga* plaintiffs. *Crown's* tolling principle applies, plaintiffs argue, not only for the first class certification petition filed but also for any subsequent petitions involving the same class. We are not persuaded. ***Plaintiffs have no authority for their contention that putative class members may piggyback one class action onto another and thus toll the statute of limitations indefinitely, nor have we found any.*** To the contrary, it has repeatedly been noted that "the tolling rule [in class actions] is a generous one, inviting abuse," and to construe the rule as plaintiffs would have us presents just such dangers.

Salazar-Calderon, 765 F.2d at 1351 (emphasis added) (quoting *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 354 (1983) (Powell, J., concurring)). *See Basch v. Ground Round, Inc.*, 139 F.3d 6 (1st Cir. 1998), *cert. denied*, 119 S. Ct. 165 (1998); *Griffin v. Singletary*, 17 F.3d 356 (11th Cir. 1994); *Andrews v. Orr*, 851 F.2d 146 (6th Cir. 1988); *Robbin v. Fluor Corp.*, 835 F.2d 213 (9th Cir. 1987); *Korwek v. Hunt*, 827 F.2d 874, 879 (2d Cir. 1987) ("[P]erpetual tolling of the statute of limitations by the filing of repeated class actions is impermissible." (quotation omitted)); *Byrd v. Travenol Laboratories, Inc.*, 675 F. Supp. 342, 348 n.5 (N.D. Miss. 1987) ("The Fifth Circuit has held that putative class members may not piggyback one class action onto another and thereby toll the statute of limitations indefinitely.").

The first nationwide Norplant class action that encompassed plaintiff Alford was filed on November 8, 1993, in California state court. *Williams v. Wyeth-Ayerst Laboratories, Inc.*, Complaint, No. 95-6198 (Cal. Super. Ct. San Francisco County), Tab 46. The putative class in that case comprised "all those persons legally damaged by Defendant's design, manufacture, marketing, and sale of the Norplant System." *Id.* ¶ 13. On February 7, 1994, the Superior Court sustained Wyeth's demurrer and dismissed the class action allegations without leave to amend. Tab 47. Under *Salazar-Calderon*, even if this Court were correct in tolling plaintiff's claims, the limitations period would be tolled for no more than **91** days. Three months is insufficient to remedy Brandi Alford's delay of almost three years.[9]

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[9] If plaintiff's claims were instead tolled by the first federal class action, the limitations period would be tolled for no more than 124 days – still insufficient to salvage her claims.

CONCLUSION

It is undisputed that Brandi Alford did not file suit within two years of when she allegedly first suffered an injury. If *Vaught* and/or *Salazar-Calderon* control, the two-year statutes of limitations bars her claims – and likely the claims of another 2000 Texas MDL plaintiffs and thousands more state plaintiffs. The Court having previously held that the two cases do not apply, Wyeth requests that the Court deny this motion forthwith and certify the issue for appellate consideration pursuant to 28 U.S.C. § 1292(b), because there is a "substantial ground for difference of opinion" about how *Vaught* and *Salazar-Calderon* should be applied and an appellate answer to that question "may materially advance the ultimate termination of the litigation" for thousands of Texas plaintiffs who filed suit more than two years after allegedly suffering injuries from Norplant.

Respectfully submitted,

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